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presumption of absolute ownership implied in the word "malik," the context does seem to strengthen the presumption that the intention was that "malik" should bear its proper technical meaning. It is to be observed that the gift to the testator's daughter-in-law, Musammat Saraswati, is made in precisely the same terms. The learned counsel for the respondents was unable to adduce any reason for holding that in her case the gift should be cut down to anything less than a full proprietary right, and, if this be admitted, the respondents have to contend for two contradictory interpretations of the same phrase.

In the result, therefore, with the greatest respect for the learned Judges in the Courts below, their Lordships are unable to agree with their decision. Their Lordships will humbly advise His Majesty that the appeal be allowed and the decrees of both Courts below discharged, and instead thereof the suit dismissed with costs in both Courts. The respondents will pay to the appellants the costs of this appeal.

Appeal allowed.

Solicitors for the appellants—*Pyke, Parrott & Co.*

Solicitors for the respondents—*Osborn Jenkyn & Son.*

J. V. W.

APPELLATE CIVIL.

1907
July 17.

Before Mr. Justice Banerji and Mr. Justice Aikman.

ASHIQ HUSAIN AND OTHERS (DEFENDANTS) *v.* ASGHARI BEGAM AND ANOTHER (PLAINTIFFS).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 32—*Exproprietary holding—Suit for possession of half of an exproprietary holding.*

The plaintiffs sued to recover possession of one half of an exproprietary holding, and added a prayer for "any other relief which might in the opinion of the Court be deemed just and proper." *Held* that the suit for possession of half of the exproprietary holding would not lie, being opposed to section 32 of the Agra Tenancy Act, 1901, but that, on the finding that the plaintiffs' share in the holding was one half, the plaintiffs were entitled to a decree declaring their right to a half share.

THIS was a suit brought by Musammat Asghari Begam and Musammat Akbari Begam, the daughters of one Masum Ali, for

* Second Appeal No. 195 of 1905 from a decree of Alopi Prasad, Additional Subordinate Judge of Moradabad, dated the 23rd of December 1904, modifying a decree of Mohan Lal Hukku, Munsif of Havali, Moradabad, dated the 29th of June 1904.

possession of a half share of an exproprietary holding, 17 bighas 7 biswas in extent, and for dispossession of the defendants from that share, the allegation being that the defendants had taken possession of the whole of the holding. The plaintiffs also claimed mesne profits. The plaint contained a prayer to the effect that the plaintiffs might be granted any other relief which might, in the opinion of the court, be deemed just and proper. The court of first instance (Munsif of Havali, Moradabad) gave the plaintiffs a decree for joint possession of 15 million odd sihams out of 76 million odd sihams. From this decree the plaintiffs appealed. The lower appellate court (Subordinate Judge of Moradabad) decreed their claim for possession of a half share out of the whole and also for mesne profits. The defendants thereupon appealed to the High Court.

Munshi *Gulzari Lal*, for the appellants.

Munshi *Gokul Prasad* (for whom Mr. *M. L. Agarwala*), for the respondents.

BANERJI and AIKMAN, JJ.—The suit which has given rise to this appeal was brought by Musammat Asghari Begam and Musammat Akbari Begam, the daughters of one Masum Ali, for possession of a half share of an exproprietary holding, 17 bighas 7 biswas in extent, and for dispossession of the defendants from that share, the allegation being that the defendants had taken possession of the whole of the holding. The plaintiffs also claimed mesne profits. The plaint contained a prayer to the effect that the plaintiffs might be granted any other relief which might, in the opinion of the Court, be deemed just and proper. The Court of first instance gave the plaintiffs a decree for joint possession of 15 million odd sihams out of 76 million odd sihams. From this decree the plaintiffs appealed. The lower appellate Court decreed their claim for possession of a half share out of the whole and also for mesne profits. The defendants have preferred this second appeal. One of the appellants Musammat Said-un-nissa died after the institution of the appeal, and although six months have expired from the date of her death, no legal representative has been brought on the record in her place. On this ground it was contended on behalf of the respondents that the appeal had abated. We are unable to accept this contention. Said-un-nissa was sued

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as a *pro formâ* defendant, and the lower appellate Court found that she had ceased to have any interest in the property. It is clear that the other defendants could have maintained the appeal even if she had not joined them. Under these circumstances we cannot hold that the appeal of the other defendants has abated. It of course abates so far as it is an appeal by Said-un-nissa.

The first plea in the memorandum of appeal is based upon the provisions of section 32 of the Tenancy Act which says that no suit for the division of a holding shall be entertained in a Civil or Revenue Court. The decree of the lower appellate Court awarding to the plaintiffs possession of a half share and directing the dispossession of the defendants from the share is substantially a decree for the division of the holding. This, according to the language used in sub-section (2) of section 32, is a decree which no Court, Civil or Revenue, can pass. It may be that the intention of the Legislature was to forbid the institution of a suit for the division of a holding as against the landholder only, but the language used in the said sub-section is general and does not give effect to any such intention. The plaintiffs, however, in their plaint ask for such other relief as the Court might deem fit to grant; and, therefore, if they are entitled to any other relief, it would be only just that such relief should be decreed to them. The Court below has found that the extent of the plaintiffs' share in the holding in question is half. That finding is based upon evidence, and is conclusive in this second appeal. Upon that finding the plaintiffs are entitled to a declaration that they have a right to a half share in the holding jointly with the defendants Nos. 1 to 4 and this declaration, we think, is what ought to have been granted in the present suit.

The second plea taken in the memorandum of appeal is based upon a misconception.

The third and fourth pleas are concluded by the findings of the Court below.

The fifth plea has in our opinion no force. Upon the finding of the Court below the plaintiffs are entitled to the mesne profits awarded to them. We therefore vary the decree of the Court below to this extent that, in lieu of the decree for possession of a

half share in 17 bighas 7 biswas and dispossession of the defendants from that share, we make a decree declaring the plaintiffs entitled to a half share in the said land jointly with the first four defendants. In other respects we affirm the decree of the Court below. We direct the parties to bear their own costs in this Court.

Decree modified.

APPELLATE CRIMINAL.

1907
November 14.

Before Mr. Justice Banerji and Mr. Justice Aikman.

EMPEROR *v.* QADIR BAKHSH AND OTHERS. *

Act No. XLV of 1860 *(Indian Penal Code), sections* 28, 231—*Counterfeiting coin—Definition—Intention.*

In order to constitute the offence defined by section 231 of the Indian Penal Code, it is not necessary that the counterfeit coin should be made with the primary intention of its being passed as genuine: it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such.

IN April 1907 certain Nepalese came to the shop of one Qadir Bakhsh in Benares, and at their request Qadir Bakhsh agreed to make for them in German silver a number of imitations of a current Nepalese coin, a sample of which was given to him. The coins were seemingly not intended originally to be passed as genuine coins, for it was stipulated that they should be made with hooks attached to them; but in fact this was not done, and the coins were handed over plain. The coins when made were a very passable imitation of the original, and, as the High Court found, might well be used for purposes of deception. On these facts Qadir Bakhsh and two of his workmen were committed for trial under section 231 of the Indian Penal Code, but were acquitted upon the ground that the coins were made for use as ornaments only and there was no intention to pass them off as genuine coins. Against this order of acquittal the present appeal was preferred by the Local Government.

The Government Advocate (Mr. *A. E. Ryves*) for the Crown: Mr. *G. W. Dillon*, for Qadir Bakhsh.

BANERJI and AIKMAN, JJ.—This is an appeal by the Local Government from an original order of acquittal passed by the

* Criminal Appeal No. 656 of 1907, against an order of Baij Nath, Sessions Judge of Benares, dated the 3rd of July 1907.